IN THE HIGH COURT OF JUDICATURE AT BOBBY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5691 OF 2005

Kiran Dattatray Somvanshi ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. S.B. Shete with Neel Helekar for the Applicant.
Ms S. D. Shinde, A.P.P. for the State.

WITH
CRIMINAL APPLICATION NO.5930 OF 2005

Shri. Arvind Tukaram Khanvilkar ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. Sanjeev P. Kadam for the Applicant.
Ms S. D. Shinde, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 09, 2005.

P.C.:

1. Heard the Advocates appearing for the Applicants and the learned A.P.P. for the State. The offence registered against the Applicants and co-accused is under section 406 and 420 read with section 34 of the Indian Penal Code.

2. The Applicant in Criminal Application No.5691 of 2005 is a stamp vendor. The Applicant in Criminal Application No.5930 of 2005 is a practising advocate. The allegation in short made by the complainant is that certain amount was paid by her to the accused persons for getting a favourable decision in a pending civil proceedings in Civil Court.

3. The allegations made by the complainant are incorporated in an affidavit allegedly sworn by the

complainant before the Executive Magistrate, Ichalkaranji. The allegations are made regarding payment of certain amount prior to 02nd August, 2003 On that day ,the pending proceeding to which the complainant was a party was decided. The Applications made by the Applicants to the Sessions Court for Anticipatory Bail were rejected on 02nd August, 2005. The F.I.R. has been registered on 26th August, 2005.

4. The learned Advocates appearing for the Applicants have brought to my notice that there is a gross delay in filing the F.I.R. Relying upon certain documents which are annexed to the Applications, they have pointed out that the allegations against the Applicants are nothing but an afterthought.

5. The learned A.P.P. submitted that the allegations against the Applicants are of very serious nature. She has shown me the investigation papers and submitted that considering the gravity of allegations, the custodial interrogation of the Applicants will be necessary. She submitted that the reasons for delay in lodging the F.I.R. are incorporated in the affidavit of the complainant herself.

6. I have considered the submissions. The object of granting Anticipatory Bail under section 438 of the Code of Criminal Procedure, 1973 is to avoid

unnecessary and undue harassment by a pre-trial arrest and detention. In the present case, the allegations which are made by the complainant are certainly of serious nature. The Applicants have placced on record a copy of complaint made by the complainant to the President of Ichalkaranji Bar Association, Ichalkaranji. The averment made in the Application No. 5930 of 2005 is that the said complaint was delivered to the Bar Association on 26th December, 2003. A true xerox copy thereof certified by the Secretary of the said Bar Association is placed on record which shows that the Bar Association received it on 26th December, 2003. Perusal of the said complaint shows that all the allegations are made only against a co-accused Shri. Magdoom who is not the Applicant in both the Applications. In fact, in the said complaint, the Applicants in these Applications are not even referred to. The allegation made therein is that the said co-accused received a sum of Rs.95,000/- from the complainant out of which he has accounted for only Rs.71,000/-. The said complaint gives an impression that her entire allegation was against the said co-accused against whom the complaint is made.

7. Apart from the said complaint addressed to the Bar Association, the complaint made by the complainant against the present Applicants which is earliest in

point of time is in the form of affidavit which is allegedly sworn before the Executive Magistrate. The stamp paper on which alleged affidavit was typed appears to be purchased on 29th March, 2005. The affidavit appears to be typed on 31st March, 2005 and it is affirmed before the Executive Magistrate on 12th May, 2005. For the first time, in May 2005 the complainant has chosen to make allegations against the present Applicants of the incidents which have taken place upto the year 2003.

8. The sum and substance of the submission of the learned A.P.P. is that the delay in making complaint is explained in the said affidavit. However, the fact that no allegations are made against the Applicants in the complaint addressed to Ichakaranji Bar Association way back in December, 2003 becomes a very relevant consideration. In the said complaint, there is not event a whisper against the present Applicants. Considering these state of affairs, it is obvious that undue harassment will be caused to the Applicants if they are subjected to pre-trial arrest. Hence, case is made out for grant of Anticipatory Bail.

8. Hence, I pass the following order:

CRIMINAL APPLICATION NO.5691 OF 2005

i) In the event of the arrest of the Applicant in connection with **C.R.No.67 of 2005 registered with Gavbhag Police Station,** Ichalkaranji, District Kolhapur, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of **Rs.10,000/- with one or two sureties** in the like amount.

ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station till the filing of chargesheet as and when called upon to do so and will co-operate for investigation with the Investigating Officer.

iii) The Bail is granted subject to condition that the Applicant shall not, direclty or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Plice Officer/Investiating Agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till chargesheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

CRIMINAL APPLICATION NO.5930 OF 2005

i) In the event of the arrest of the Applicant in connection with **C.R.No.67 of 2005 registered with Gaonbhag Police Station,** Ichalkaranji, District Kolhapur, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of **Rs.10,000/- with one or two sureties** in the like amount.

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iii) The Bail is granted subject to condition that the Applicant shall not, direclty or indirectly, make any inducement, threat or promise to any person

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vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE